

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
MAR 30 2007

CLERK

UNITED STATES OF AMERICA,

CR 06-30056 (01)

Plaintiff,

-vs-

ORDER AND OPINION

WILLARD MENARD,

Defendant.

Defendant Willard Menard ("Menard") filed and served a motion to suppress statements with a supporting memorandum of law (Docs. 26 and 27). Plaintiff served and filed a resistance to the motion (Doc. 30). Magistrate Judge Moreno conducted an evidentiary hearing on March 20, 2007. The only witness was SA Ramirez of the Federal Bureau of Investigation. Exhibit two was a tape recording of a statement from Menard.

I have conducted a *de novo* review of the transcript of the hearing (Doc. 92), the transcript of the bench decision of the magistrate (Doc. 90), the formal report and recommendation of the magistrate (Doc. 89), and the tape recording of the Menard statement.

Menard has timely filed and served objections (Doc. 95) and I have carefully considered the objections as well.

I agree with the action of the magistrate. The interrogation was not custodial and no *Miranda* warning was required. The defendant was given his rights more than once by the agent. No rights of the defendant were violated. The statements were voluntary. The motion should be denied. The report and recommendations should be accepted and the objections overruled. The statements will be admissible at trial.

Now, therefore,

IT IS ORDERED, as follows:

- 1) The motion (Doc. 26) is denied.
- 2) The report and recommendation (Doc. 89) is adopted.
- 3) The objections of Menard (Doc. 95) are overruled.

Dated this 30th of March, 2007.

BY THE COURT:




CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:


DEPUTY

(SEAL)